

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1837 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GANPATJI HIRAJI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

#. Heard learned counsel Mr.H.R.Prajapati, for the petitioner and learned A.G.P. Mr.D.P.Joshi, for the respondent nos.1,2 and 3.

#. The detention order dtd.21.1.1999 passed by the respondent no.2 - Commissioner of Police, Ahmedabad in exercise of power conferred under Sec.3 (1) of Gujarat

Prevention of Anti Social Activity Act 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner under Sec.9 (1) of PASA, copy of which is produced at Annexure B, interalia indicate that two prohibition cases were registered against the petitioner vide C.R.No.426/98 and C.R. No.71/99 on 20.1.99 at Nashabandhi Police Station East Division. That in each case country made liquor was seized from the possession of the petitioner. The grounds further indicate that two witnesses vide their statements on assurance of anonymity have furnished information about the bootlegging activity of the petitioner pertaining to incident dtd.30.12.1998 and 3.1.99. That in consideration of the aforesaid material respondent no.2 as detaining authority has come to conclusion that the petitioner is a "bootlegar" within the meaning Sec.2 (b) of PASA. That resort to general provisions of law not being sufficient to prevent the petitioner from continuing his anti-social activity, the detention order is necessary and hence impugned order is passed.

#. The petitioner has challenged this impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that on 20.1.99 the day on which impugned order is passed, the petitioner was in police custody in respect to a prohibition case registered against him and yet without considering the less drastic remedy like cancellation of bail, the detaining authority has passed the impugned order and therefore, it is bad in law.

#. In the matter of Jubedabibi Rashidkhan Pathan Vs. State of Gujarat, reported in 1995 (2) G.L.R. P.1134, the Division Bench of this court has expressed the view that non consideration of less drastic remedy like cancellation of bail available under Sec.437 (5) of Cr.P.C. suggest non application of the mind on the part of the detaining authority vitiating subjective satisfaction thereby rendering the detention order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar & A.L.Dave JJs).

#. In the instant case from the last para of ground of detention it appears that the detaining authority having observed that the petitioner is in police custody has shown apprehension that by the passage of time petitioner

would make a bail application and having got himself released on bail, he is likely to continue his bootlegging activity which would prejudicially affect the maintenance of public order. Thus the impugned order appears to have been passed on apprehension without considering the aspect of less drastic remedy available under Sec.437 (5) of Cr.P.C. which has vitiated the subjective satisfaction rendering the impugned order bad in law.

#. As the petition succeeds on the above-stated point alone, it is not necessary to consider other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, petition is allowed. The detention order dtd.21.1.1999 passed by the respondent no.1 against the petitioner is hereby quashed and set-aside. Petitioner Ganpatji Hiraji Rathod is ordered to set at liberty forthwith, if not required in any other case.

#. Rule to that extent is made absolute.

kks